

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ronald R. Baird	:	
-vs-	:	
Commonwealth Edison Company	:	14-0402
	:	
Complaint as to billing/charges	:	
in Glen Ellyn, Illinois.	:	

PROPOSED ORDER

By the Commission:

I. Procedural History

On May 30, 2014, Ronald R. Baird ("Complainant" or "Mr. Baird") filed a Formal Complaint with the Illinois Commerce Commission ("Commission") against Commonwealth Edison Company ("Respondent" or "ComEd"). Complainant disputes ComEd's charges of \$1,472.20 for electric service provided to his property located at 321 Roosevelt Road, Glen Ellyn, Illinois ("Property").

Pursuant to notice given in accordance with the law and rules of the Commission, a prehearing conference was held on June 26, 2014 before a duly authorized Administrative Law Judge ("ALJ") of the Commission at its offices in Chicago, Illinois. Thereafter, an evidentiary hearing was held on September 11, 2014. Complainant appeared *pro se* and testified on his own behalf. Respondent appeared by counsel and presented the testimony of Marilyn Widmer, a ComEd Customer Relations Business Analyst; John Fitzpatrick, a ComEd Senior Energy Technician; and John Selenica, a ComEd System Meter Shop Supervisor. At the conclusion of the hearing on September 11, 2014, the record was marked "Heard and Taken."

II. Evidence Presented

a. Complainant's Testimony

Mr. Baird testified that he has owned the Property, which is commercial real estate, for 20 years. He testified that Mr. John Fjellander, a licensed electrician, contractor and village inspector for Wooddale, serves as a caretaker for the Property. Mr. Baird explained that when a tenant leaves the Property, he calls the utility companies and has the bills sent to his home address in La Jolla, California. He stated that he contacted ComEd on four or five occasions to request that the utility send the bills to his home address in La Jolla. However, he did not receive the bills in August, September, or

October of 2013. He stated that he subsequently received a bill in November 2013 for \$1,400.

Mr. Baird also testified that he called ComEd immediately after receiving the November bill to set up a meeting between Mr. Fjellander and ComEd's representative because the bills were too high for a vacant property. He offered the signed affidavit of Mr. Fjellander as an exhibit and indicated Mr. Fjellander was available for cross examination by telephone if necessary. ComEd agreed to waive cross and any objection to the affidavit and the affidavit was admitted into evidence as Complainant Exhibit 1. Mr. Baird described what happened at the meeting between Mr. Fjellander and ComEd's representative based on Mr. Fjellander's affidavit. He stated that according to Mr. Fjellander, the ComEd representative called to ask how to test for amps, and then took a reading of less than 1 amp. Mr. Baird also stated that the representative informed Mr. Fjellander that the building was drawing a lot of power. He then replaced the meter and advised Mr. Fjellander that the meter would be tested somewhere else rather than at that location.

Mr. Baird further testified that the bill he received in November 2013 showed usage of 3,545 kilowatts for August 1, 2013 through August 12, 2013; 5,369 kilowatts for August 12, 2013 through September 11, 2013; 3,816 kilowatts for September 11, 2013 through October 10, 2013; and 1,883 kilowatts for October 10, 2013 through November 8, 2013. He stated that after the new meter was installed at the Property on December 11, 2013, he was billed for usage of 275 kilowatts for December 11, 2013 through November 15, 2014.

Mr. Baird stated that he was not going to challenge ComEd's test results. He stated that he believed the results are irrelevant since: (i) the meter has remained in ComEd's custody and access to the meter from an independent testing authority was denied and (ii) the meter was not tested at the Property, as requested, when Mr. Fjellander was present. Mr. Baird also stated that this is the second time he has had a problem getting ComEd to promptly send his bills to his home address in La Jolla. He argued this may be happening because ComEd has categorized the Property as a residence instead of commercial property. He also asserted that he could have detected the alleged overbilling earlier if he received the bills in a timely fashion at his home address.

b. Respondent's Testimony

ComEd witness Marilyn Widmer testified that she has been employed by ComEd for 33 years. She stated that in her current position as Customer Relations Business Analyst she handles various complaint issues and a wide variety of ComEd billing issues.

Ms. Widmer stated that she handled Mr. Baird's Informal Complaint and reviewed his Formal Complaint as well. She testified as to ComEd Exhibits 1 and 2, an activity statement for the Property and a meter reading history for the Property, respectively. She testified that the account was activated in Mr. Baird's name on August 1, 2013, and

ComEd took actual readings on August 12, 2013, September 11, 2013, October 10, 2013, and November 8, 2013. Ms. Widmer noted that a ComEd representative went out to the Property and conducted a high bill reread on November 19, 2013. She stated that an actual reading was also taken when the meter at the Property was exchanged and that actual readings were taken on the new meter on January 15, 2014, February 14, 2014, March 15, 2014, April 15, 2014, May 13, 2014, June 13, 2014, July 15, 2014, and August 13, 2014.

On cross-examination, Ms. Widmer clarified that Mr. Baird's account has always been billed at a commercial rate and never classified as residential property by ComEd. She concluded her testimony by stating that nothing was improper or inaccurate about the billing on Mr. Baird's account based upon her review of the account, including the billing and meter history.

ComEd witness John Fitzpatrick testified that in his current position as Senior Energy Technician he exchanges and installs meters. He stated that he went to the Property and exchanged the meter on November 26, 2013. Mr. Fitzpatrick stated that he did not remember the conversation he had with Mr. Fjellander at that time. He explained that he exchanged the meter because of a periodic meter exchange which occurs every eight years. He further explained that when a periodic meter exchange is performed, the meter is exchanged and sent for testing every eight years as required by the Commission. He stated that he read the meter, checked the cabinet to make sure everything was safe, secured the meter, put a green tag on it, and sent it in for testing. He testified as to ComEd Exhibit 3, the Order Completion Data Report, which describes what he did at the Property during his visit on November 26, 2013.

On cross-examination, Mr. Fitzpatrick testified that he could not remember whether there was a reading of less than 1 amp.

ComEd witness John Selenica testified that he has worked for ComEd for 30 years. He stated that in his current position as the System Meter Shop Supervisor, which he has held for six years, he supervises technicians performing testing of ComEd electric meters. He testified that he was familiar with the meter that was taken from the Property on November 26, 2013, which he brought with him to the evidentiary hearing. Mr. Selenica explained that when a meter is purchased, the manufacturer tests the meter and then puts a T-bar seal on it, and that the T-bar seal was intact on Mr. Baird's meter.

Mr. Selenica also testified as to ComEd Exhibit 4, which showed that the meter that was taken from the Property on November 26, 2013 was referee tested on April 15, 2014. He stated that he was present for that test, as was Mr. Baird's representative and a Commission representative. Mr. Selenica explained that the meter tested within the limits set by the Commission – 99.90 percent weighted average. He stated that the first test results were 99.91 percent and 99.90 percent and the second test results were 99.90 percent and 99.90 percent. He stated that the meter was brought into the shop in a locked yellow basket on November 26, 2013. He testified as to ComEd Exhibit 5, which showed

another meter test that was performed on the meter taken from the Property on February 27, 2014. He stated that the meter tested within Commission limits at that time as well.

Mr. Selenica explained that a meter testing less than 1 amp would have no effect on the meter's measure of the watts used during the 24-hour billing cycle upon which ComEd's billing is based.

On cross-examination, Mr. Selenica explained that ComEd sometimes tests meters at the site, however, he was uncertain if a request was made to test Mr. Baird's meter at the Property. He also stated that the meter was secured in a lockbox from the time it was taken from the Property to the time it was tested.

On redirect, Mr. Selenica testified that he could tell there was no tampering with the meter because the manufacturer's T-bar was still intact, which shows the cover had not been removed. He also explained that when ComEd employees work on a meter, they check for unsafe conditions and tampering.

III. Commission Analysis and Conclusion

Mr. Baird disputes ComEd's charges of \$1,472.20 billed to him for electric service provided to his Property. Based on the evidence in the record, the Commission finds that Mr. Baird is responsible for the charges.

The Commission notes that the burden of proof is on the Complainant. *Averill English v. Village of Northfield*, 172 Ill.App.3d 344, 526 N.E.2d 588 (1988); *Sprint Communications L.P. v. Illinois Bell Telephone Co.*, Docket No. 07-0629, Order at 19 (July 30, 2008). Therefore, in order for the Commission to grant Mr. Baird the relief he requested in the Complaint, he must show by a preponderance of the evidence that ComEd's charges were incorrect. 5 ILCS 100/10-15. The Commission finds that Mr. Baird has failed to meet his burden of proof. More specifically, Mr. Baird has failed to prove by a preponderance of the evidence that the meter at his Property was reading his usage incorrectly or that ComEd's billing was incorrect.

The evidence in the record shows that the meter at the Property tested within the guidelines established by the Commission for meter accuracy and that the billing for the Property was based on regular, actual readings of the meter. Mr. Baird did not present any evidence to refute the test results or challenge the bills.

Mr. Baird's argument that the meter test results are irrelevant is without merit. First, while it appears ComEd's technician did not test the meter at the Property, it is unclear whether a meter test was requested by Mr. Baird pursuant to 83 Ill. Adm. Code 410.190(a). More importantly, even if such a request was made, Mr. Baird failed to show that there was any harm caused by testing the meter at the meter shop instead.

Second, ComEd complied with 83 Ill. Adm. Code 410.190(d) and conducted a Commission referee test as requested by Mr. Baird. The referee test was conducted on

April 15, 2014, in the presence of Mr. Baird's representative and a Commission representative. This test provided Mr. Baird the opportunity to have the meter tested a second time with an independent party present to verify that the test was conducted properly and fairly. Thus, Mr. Baird also failed to show that there was any harm caused by his inability to have a meter test conducted by an independent testing authority.

Mr. Baird's argument that he was unable to determine that there was a billing issue for four months because ComEd did not send the bills to the proper address is also unpersuasive. The issue of where bills are sent is irrelevant to the issues of whether ComEd's meter was functioning within Commission limits and whether ComEd's billing was correct.

For the reasons stated above, the Commission is of the opinion that Mr. Baird's usage has been accurately metered and the contested bills are accurate. The Commission has repeatedly upheld the results of valid meter tests in the absence of compelling evidence refuting those results. The Commission has applied this standard and denied complaints specifically in cases like this one, where the complainant alleged that their property was unoccupied during the time at issue. See e.g. *Jewell Diamond v. Commonwealth Edison Co.*, Docket No. 91-0275, Order at 2 (February 5, 1992); *Suzanne Zawaski v. Commonwealth Edison Co.*, Docket No. 90-0286, Order at 2 (January 15, 1991); *Burton Stern v. Commonwealth Edison Co.*, Docket No. 93-0169, Order at 2 (November 9, 1993); *Raymond J. Caprini v. Commonwealth Edison Co.*, Docket No. 88-0135, Order at 1 (December 7, 1988); *Kerry D. Fishman v. Commonwealth Edison Co.*, Docket No. 86-0021, Order at 2 (September 4, 1986). Accordingly, the Commission finds that the Complaint filed by Mr. Baird must be denied in its entirety.

IV. Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) ComEd is a "public utility" as defined in the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (3) the recitals of facts and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) Mr. Baird has failed to sustain his burden of proving that he is not responsible for the outstanding charges of \$1,472.20 billed by ComEd for electric service provided to the Property;
- (5) the unpaid charges of \$1,472.20 are the responsibility of Mr. Baird and are due and owing from Mr. Baird to ComEd; and

- (6) in accordance with the provisions of Findings (4) and (5) above, this Complaint should be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint filed by Ronald R. Baird against Commonwealth Edison Company be, and is, hereby denied.

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusion contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

May 1, 2015
May 15, 2015
May 22, 2015

Sonya Teague Kingsley,
Administrative Law Judge